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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,267	07/18/2003	Darrell James Monnie	115171-003	3505

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EXAMINER

PENDLETON, DIONNE

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,267

Applicant(s)

MONNIE ET AL.

Examiner

Dionne H. Pendleton

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 16-25, 28, 30, 33 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-15, 26, 27, 29, 31, 32 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. **Claims 1,8,26 and 31** are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 1,8,26 and 31 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the reply filed 1/9/2006. In that paper, applicant has stated that the prior art reference relied upon fails to teach a tubular shape and the Applicant further provides a series of definitions as provided by The Heritage Dictionary of English Language wherein the most applicable definition defines the term "tubular" as "a hollow cylinder....". This statement indicates that the invention is different from what is defined in the specification because the Applicants sound director, though hollow, is not *cylindrical* in shape. Instead the Applicant's sound director resembles more of a hollow rectangular shape. Therefore, the Applicant's claims are misdescriptive in reciting "tubular portion", "tubular shape" and "tubular channel". Correction is therefore required.

Note: all claims dependent upon rejected claims 1,8,26 and 31, are also rejected under USC 112, second paragraph, due to their claim dependency.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1-3** are rejected under 35 U.S.C. 102(b) as being anticipated by **Davis (US 2002/0189894 A1)**.

Regarding claim 1,

Davis teaches, in **figure 1**, a device for use in conjunction with a mouth **20** and an ear **22** of a user, comprising: in **figure 2**, a vocal sound receiver **18**; a sound director **40** having a first end, second end and at least one tubular portion **40** positioned there-between, the first end (**see upper end of hollow tube 40**) coupled to the vocal sound receiver **18**; and an ear sound deliverer **14** coupled to the sound director **40**.

Regarding claim 2,

Davis teaches that the sound receiver, deliverer and director are entirely mechanical.

Regarding claim 3,

In **figure 3**, Davis teaches that the sound deliverer **14** includes a head engagement member **30**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 4, 8-15,26,27,29,31,32 and 34** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Davis (US 6,229,901)** in view of **Bronnikov (US 2002/0131616)**.

Regarding claims 4 and 13-15,

Davis appears to teach that the device has an interchangeable left-ear/right-ear orientation

Davis does not clearly teach that a head securing member is removably attached to the device.

In **figure 4**, Bronnikov teaches a device for placement over a wearer's ear, wherein the head securing member **(404,406)** is removably attached to that portion of the device which delivers sound to the ear of the wearer. For example, in the situation where it is desirable to switch the device from the left ear to the right ear, the wearer is able to remove the earpiece portion from one side of the head securing member, and then connect the earpiece device to the opposite side of the head securing member.

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Davis and Bronnikov, constructing the device of

Davis such that the head securing member is detachable from the sound directing components, thus permitting a greater freedom of use of the device.

Regarding claim 8,

Davis teaches a vocal sound receiver **18** defining at least one opening;

In **figure 2**, Davis further teaches a sound director **40** having several portions, wherein the sound director is tubular and comprises a *first tubular portion* defined between sound receiver **18** and bottom rod **50**, wherein the said first portion is curved so as to form a portion of the "C-shaped" device, thereby reading on "defining a least one bend";

a second tubular portion defined as the area between lower rod **50** and upper rod **50**, also being coupled to the first tubular portion;

and finally *a third tubular portion* defined as the area between upper rod **50** and ear sound deliverer **14**, wherein said third portion is also curved so as to form a portion of the "C-shaped" device, thereby reading on "defining a least one bend";

Also see paragraph [0024] wherein Davis teaches that the device may be constructed in various shapes;

an ear sound deliverer **14** coupled to the third tubular portion and defining at least one opening (see figure 3);

the ear sound deliverer **14** having a head engagement member **30**

Davis does not clearly teach at least one head securing member coupled to the sound director.

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Bronnikov teaches in **figure 8**, and discussed in **paragraph [0052]**, **page 4**, that an earpiece support assembly **802** may be provided for connection to an ear assembly so as to support the ear assembly about the head of a user. It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Davis and Bronnikov, providing a means for supporting the aural feedback device of Davis about the head of the wearer, for the purpose of freeing the user's hands while utilizing the aural feedback device.

Regarding claim 9,

in **figure 4**, Davis teaches that the sound director **40** is a one-piece member.

Regarding claim 10,

Davis teaches that the sound receiver, deliverer and director are entirely mechanical.

Regarding claim 11,

In **figure 3** and discussed in **paragraph [0020]**, Davis teaches that the head engagement member **30** has an open center portion, which encompasses the ear of the vocalist.

Regarding claim 12,

Bronnikov teaches that the head securing member includes an elongated head portion engagement member **802**.

Regarding claims 26 and 31,

Davis teaches a method comprising:

Using a first portion **18** to receive the vocal sound from the vocalist;

Using a second portion **40** to direct a portion of the vocal sounds toward a third portion **14**, wherein the second portion has a tubular shape;

And using the third portion **14** of the device, to direct the vocal sounds to the ear of the vocalist.

Davis does not clearly teach enabling a vocalist to secure a device to a head portion of the vocalist via headband member.

Bronnikov teaches in **figure 8**, and discusses in **paragraph [0052] of page 4**, that an earpiece support assembly **802**, reading on "headband member" may be provided for connection to an ear assembly so as to support the ear assembly about the head of a user. It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Davis and Bronnikov, providing a means for supporting the aural feedback device of Davis about the head of the wearer, for the purpose of freeing the user's hands while utilizing the aural feedback device.

Regarding claims 27 and 32,

Davis teaches the step of providing a "unitary" device, which includes the first, second and third portions.

Regarding claims 29 and 34,

The combination of Davis and Bronnikov teaches enabling the vocalist to adapt the device for delivering the vocal sound to one of the right ear or left ear of the user.

Response to Arguments

4. Applicant's arguments with respect to claims 1-4, 8-15, 26,27,29,31,32 and 34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne H. Pendleton whose telephone number is 571-272-7497. The examiner can normally be reached on 9-5:30 M-F.

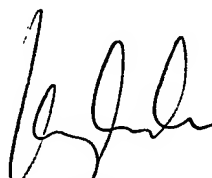
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dionne Pendleton



HUYEN LE
PRIMARY EXAMINER